

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**  
**CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

|  |  |   |   |
|--|--|---|---|
| Case Caption:<br><br>United States v. In the matter of a Warrant to Search a certain E-mail account controlled and maintained by Microsoft Corporation<br><br>(Please note: Microsoft's Acknowledgment and Notice of Appearance Form provides a suggested corrected this caption.) |  | District Court or Agency:<br><br>S.D.N.Y.   | Judge:<br><br>Hon. Loretta Preska   |
|  |  | Date the Order or Judgment Appealed from was Entered on the Docket:<br><br>7/31/2014, 8/11/2014 | District Court Docket No.:<br><br>13-mj-2814                              |
|  |  | Date the Notice of Appeal was Filed:<br><br>8/11/2014   | Is this a Cross Appeal?<br><br>Yes <input checked="" type="checkbox"/> No |

|   |   |          |                |          |         |
|---|---|----------|----------------|----------|---------|
| Attorney(s) for Appellant(s):<br><br>Plaintiff<br>Defendant | Counsel's Name:<br><br>E. Joshua Rosenkranz, Orrick, Herrington & Sutcliffe LLP, 51 W. 52nd Street, New York, NY 10019. Tel: 212-506-5380. Fax: 212-506-5151. E-mail: jrosenkranz@orrick.com. | Address: | Telephone No.: | Fax No.: | E-mail: |
|---|---|----------|----------------|----------|---------|

|  |  |          |                |          |         |
|--|--|----------|----------------|----------|---------|
| Attorney(s) for Appellee(s):<br><br>Plaintiff<br>Defendant | Counsel's Name:<br><br>Justin Anderson, U.S. Attorney's Office for the Southern District of New York, One St. Andrew's Plaza, New York, NY 10007. Tel: 212-637-1035. Fax: 212-637-2615. E-mail: justin.anderson@usdoj.gov. | Address: | Telephone No.: | Fax No.: | E-mail: |
|--|--|----------|----------------|----------|---------|

|   |   |   |   |  |
|---|---|---|---|--|
| Has Transcript Been Prepared?<br><br>In process | Approx. Number of Transcript Pages:<br><br>71 | Number of Exhibits Appended to Transcript:<br><br>0 | Has this matter been before this Circuit previously?<br><br>If Yes, provide the following:<br><br>Case Name:<br><br>2d Cir. Docket No.: | Yes <input checked="" type="checkbox"/> No   |
|   |   |   |   | Reporter Citation: (i.e., F.3d or Fed. App.) |

**ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.**

**ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.**

**PART A: JURISDICTION**

|   |  |   |  |
|---|--|---|--|
| 1. <u>Federal Jurisdiction</u><br><br><input checked="" type="checkbox"/> U.S. a party<br><br>Federal question (U.S. not a party) |  | 2. <u>Appellate Jurisdiction</u><br><br><input checked="" type="checkbox"/> Final Decision<br><br>Interlocutory Decision Appealable As of Right |  |
| Diversity<br><br>Other (specify): _____   |  | Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))<br><br>Other (specify): _____   |  |

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

## PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

|  |   |   |  |   |
|--|---|---|--|---|
| 1. <u>Stage of Proceedings</u>   | 2. <u>Type of Judgment/Order Appealed</u>   | 3. <u>Relief</u>  |  |   |
| <input checked="" type="checkbox"/> Pre-trial<br><input type="checkbox"/> During trial<br><input type="checkbox"/> After trial | Default judgment<br>Dismissal/FRCP 12(b)(1)<br>lack of subj. matter juris.<br>Dismissal/FRCP 12(b)(6)<br>failure to state a claim<br>Dismissal/28 U.S.C. § 1915(e)(2)<br>frivolous complaint<br>Dismissal/28 U.S.C. § 1915(e)(2)<br>other dismissal | Dismissal/other jurisdiction<br>Dismissal/merit<br><input checked="" type="checkbox"/> Judgment / Decision of the Court<br>Summary judgment<br>Declaratory judgment<br>Jury verdict<br>Judgment NOV<br>Directed verdict<br>Other (specify): _____ | Damages:<br><input type="checkbox"/> Sought: \$ _____<br><input type="checkbox"/> Granted: \$ _____<br><input type="checkbox"/> Denied: \$ _____ | Injunctions:<br><input type="checkbox"/> Preliminary<br><input type="checkbox"/> Permanent<br><input type="checkbox"/> Denied |
|  |   |   | Motion to vacate warrant denied.   |   |

## PART C: NATURE OF SUIT (Check as many as apply)

|   |   |   |   |  |   |
|---|---|---|---|--|---|
| 1. <u>Federal Statutes</u>  | 2. <u>Torts</u>   | 3. <u>Contracts</u>   | 4. <u>Prisoner Petitions</u>  |  |   |
| Antitrust<br>Bankruptcy<br>Banks/Banking<br>Civil Rights<br>Commerce,<br>Energy<br>Commodities<br><input checked="" type="checkbox"/> Other (specify): <u>Electronic Communications Privacy Act</u> | Communications<br>Consumer Protection<br>Copyright <input type="checkbox"/> Patent<br>Trademark<br>Election<br>Soc. Security<br>Environmental | Freedom of Information Act<br>Immigration<br>Labor<br>OSHA<br>Securities<br>Tax   | Admiralty/<br>Maritime<br>Assault /<br>Defamation<br>FELA<br>Products Liability<br>Other (Specify): _____ | Admiralty/<br>Maritime<br>Arbitration<br>Commercial<br>Employment<br>Insurance<br>Negotiable<br>Instruments<br>Other Specify | Civil Rights<br>Habeas Corpus<br>Mandamus<br>Parole<br>Vacate Sentence<br>Other |
| 5. <u>Other</u>   | 6. <u>General</u>   | 7. Will appeal raise constitutional issue(s)?   |   |  |   |
| Forfeiture/Penalty<br>Real Property<br><input type="checkbox"/> Treaty (specify): _____<br><input type="checkbox"/> Other (specify): _____  | Arbitration<br>Attorney Disqualification<br>Class Action<br>Counsel Fees<br>Shareholder Derivative<br>Transfer                                | <input checked="" type="checkbox"/> Yes      No<br><br>Will appeal raise a matter of first impression?<br><input checked="" type="checkbox"/> Yes      No |   |  |   |

|   |                  |                 |                        |
|---|------------------|-----------------|------------------------|
| 1. Is any matter relative to this appeal still pending below? <input checked="" type="checkbox"/> Yes, specify: <u>Gov't motion to order compliance</u> No  |                  |                 |                        |
| 2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:<br>(A) Arises from substantially the same case or controversy as this appeal?      Yes <input checked="" type="checkbox"/> No<br>(B) Involves an issue that is substantially similar or related to an issue in this appeal?      Yes <input checked="" type="checkbox"/> No |                  |                 |                        |
| If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the other action(s):  |                  |                 |                        |
| Case Name: _____  | Docket No. _____ | Citation: _____ | Court or Agency: _____ |
| Name of Appellant: _____  |                  |                 |                        |

|                        |   |
|------------------------|---|
| Date: <u>8/25/2014</u> | Signature of Counsel of Record: <u>/s/ E. Joshua Rosenkranz</u> |
|------------------------|---|

## NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

**PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.**